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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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SIOUX STEEL COMPANY,  
a South Dakota corporation,

Plaintiff,

vs. Civ. 15-4136

KC ENGINEERING, P.C., an Iowa  
corporation,

Defendant.

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Deposition of: JASON O'MARA, PE  
Date: February 27, 2017  
Time: 2:28 p.m.

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## APPEARANCES

Mr. G. Verne Goodsell  
Goodsell Quinn, LLP  
Rapid City, South Dakota

and

Ms. Amy Ellis  
Sioux Steel Company General Counsel  
Sioux Falls, South Dakota

Attorneys for the Plaintiff

Mr. Michael F. Tobin  
Boyce Law Firm, LLP  
Sioux Falls, South Dakota

Attorney for the Defendant

REPORTED BY: Audrey M. Barbush, RPR

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## STIPULATION

1 It is hereby stipulated and agreed by and between the  
 2 above-named parties through their attorneys of record, whose  
 3 appearances have been hereinabove noted that the deposition  
 4 of JASON O'MARA, PE, may be taken at this time and place,  
 5 that is, at the offices of Boyce Law Firm, LLP, 300 South  
 6 Main Avenue, Sioux Falls, South Dakota, on the 27th day of  
 7 February, 2017, commencing at the hour of 2:28 p.m.; said  
 8 deposition taken before Audrey M. Barbush, a Registered  
 9 Professional Reporter and Notary Public within and for the  
 10 State of South Dakota; said deposition taken for the purpose  
 11 of discovery or for use at trial or for each of said  
 12 purposes, and said deposition is taken in accordance with  
 13 the applicable Rules of Civil Procedure as if taken pursuant  
 14 to written notice. Objections, except as to the form of the  
 15 question, are reserved until the time of trial. Insofar as  
 16 counsel are concerned, the reading and signing of the  
 17 transcript by the witness is not waived.

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23 JASON O'MARA, PE,  
 24 called as a witness, having been first duly sworn,  
 25 testified as follows:

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## I N D E X

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2	Examination:	Page
3	By Mr. Goodsell	4
4	Exhibit Nos.:	Page
5	<a href="#">Exhibit 27</a> - Defendant's Supplemental Answers and	
6	Responses to Plaintiff's First Set of	
7	Interrogatories and Requests for Production	
8	of Documents to Defendant	56
9	-oOo-	
10	(The original transcript was provided to Mr. Goodsell.)	
11	-oOo-	
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## EXAMINATION

1 BY MR. GOODSELL:  
 2 Q Would you state your name and your professional  
 3 address.  
 4 A Jason O'Mara, 4300 South Lakeport, Suite 205,  
 5 Sioux City, Iowa.  
 6 Q Jason, in the course of this you've been here during  
 7 some of the other depositions, but if my question is  
 8 something you don't understand, you tell me. Okay?  
 9 A Will do.  
 10 Q And the reason is we want to get your testimony correct  
 11 on the record for trial. You understand that?  
 12 A Yes.  
 13 Q So this is kind of my opportunity to figure out or to  
 14 talk with you about what you're going to say at trial.  
 15 A Okay.  
 16 Q Fair enough?  
 17 A Fair enough.  
 18 MR. GOODSELL: Counsel, I think we're taking this  
 19 pursuant to notice, and it's been delayed and  
 20 rearranged. I assume we stipulate to that it can be  
 21 used for all purposes?  
 22 MR. TOBIN: Correct.  
 23 BY MR. GOODSELL:  
 24 Q Just give me your undergraduate experience in terms of  
 25

<p style="text-align: right;">Page 25</p> <p>1 A I can explain why we spot-checked.  2 Q We'll get there later.  3 A Okay.  4 Q A structural engineering analysis of a hopper design  5 drawing would require an analysis and review of panel  6 seams.  7 A If I were the only designer, if I were the one who was  8 responsible myself for the design and I weren't just  9 doing a review of limited scope, then, yes, I would  10 have to check every single connection.  11 Q Is there anything in the structural engineering  12 analysis of a hopper design drawing that would require  13 an analysis and review of the panel seams?  14 Would it be required unless it's excluded?  15 A And I'm telling you that there's -- that that question  16 is incomplete. You're trying to say that because I  17 didn't check that connection, that I didn't fulfill my  18 duty as an engineer, but that's --  19 Q Let me ask you this: By not checking that seam, the  20 vertical panel seams in the hopper -- do you feel that  21 by not doing that, you performed professional services  22 from a structural analysis point of view?  23 A Rephrase the question, please.  24 MR. GOODSSELL: Do you want to read that back for  25 me, please.</p>	<p style="text-align: right;">Page 27</p> <p>1 Q So KC did not analyze the design drawings of the  2 vertical hopper seams, correct?  3 A Analyze the drawings?  4 Q Analyze the design drawings of the vertical hopper  5 seams.  6 A I don't -- the question doesn't make sense to me.  7 Q Well, take a look at <a href="#">Exhibit 24</a>.  8 A Okay.  9 Q I have the vertical panel seam marked there with  10 yellow. Do you see that?  11 A Uh-huh.  12 Q KC did not analyze <a href="#">Exhibit 24</a>, the design drawing of  13 the vertical hopper panel seam; is that correct?  14 A By not analyzing the drawing, do you mean that we did  15 not do an independent calculation of the capacity of  16 that seam?  17 Q I mean you didn't analyze it.  18 A Well, we did analyze the stresses along that seam.  19 When we did our RISA model, we created a  20 three-dimensional model that included the hopper, and  21 it gave us stress -- the output of that. After we  22 applied our loads to the model, the output of that  23 model was loads and stresses and forces that were then  24 given in the report that we gave to Chad.  25 Q But KC did not analyze the design drawings of the</p>
<p style="text-align: right;">Page 26</p> <p>1 (The record was read by the reporter as follows:  2 Question: "Let me ask you this: By not checking  3 that seam, the vertical panel seams in the hopper -- do  4 you feel that by not doing that, you performed  5 professional services from a structural analysis  6 point of view?")  7 THE WITNESS: No. When you don't do something,  8 that's not doing something, so no.  9 BY MR. GOODSSELL:  10 Q A structural engineering analysis of a hopper design  11 drawing would require analysis and review of the panel  12 seams. True or false?  13 A A complete analysis, yes.  14 Q An analysis by KC of the drawings of the vertical  15 hopper seam panels would have disclosed an error in the  16 vertical seam design; is that correct?  17 A I believe that it would have, yes.  18 Q KC did not analyze the design drawings of the vertical  19 hopper panel seams.  20 A KC did not analyze the design drawings of the vertical  21 hopper seams?  22 Q Is that correct?  23 A We looked at those drawings because we needed the  24 geometry in order to make our RISA model. We did not  25 specifically check the capacity of those seams.</p>	<p style="text-align: right;">Page 28</p> <p>1 vertical hopper seams to see if they could withstand  2 the forces that would be developed that you calculated  3 off the RISA model, correct?  4 A We did not specifically do a hand calculation to check  5 the different limit states for those bolted connections  6 at those vertical seams, that's correct.  7 Q KC specifically stated in its proposal that the project  8 description included a structural engineering analysis  9 and design review, correct?  10 A That's correct.  11 Q KC never modified, altered, or changed its written  12 proposal dated July 30, 2012, <a href="#">Exhibit 17</a>; is that  13 correct?  14 A We did not.  15 Q KC never in writing altered, modified, or changed the  16 scope of the professional engineering services provided  17 in its proposal.  18 A That is correct.  19 Q KC never in writing notified Sioux Steel that its  20 services under the proposal, <a href="#">Exhibit 17</a>, were limited  21 because of Sioux Steel's failure to provide  22 information; is that correct?  23 A Our proposal included the requirement that Sioux Steel  24 provide us with all criteria and full information as to  25 the requirements of the project, and we also required</p>

<p style="text-align: right;">Page 29</p> <p>1 for them to send us their calculations. So I think</p> <p>2 that our scope was limited within our proposal.</p> <p>3 Q KC never in writing notified Sioux Steel that its</p> <p>4 services under the proposal were limited because of</p> <p>5 Sioux Steel's failure to provide information. Is that</p> <p>6 a correct statement?</p> <p>7 A I think implicit in our requirement that they provide</p> <p>8 calculations for us to review is that our scope</p> <p>9 includes them providing calculations for us to review.</p> <p>10 Q What's the answer to my question?</p> <p>11 MR. TOBIN: I think he just provided it to you.</p> <p>12 MR. GOODSSELL: He did not. Let me repeat the</p> <p>13 question.</p> <p>14 THE WITNESS: Okay.</p> <p>15 BY MR. GOODSSELL:</p> <p>16 Q KC never in writing notified Sioux Steel that its</p> <p>17 services under the proposal were limited because of</p> <p>18 Sioux Steel's failure to provide information.</p> <p>19 A I think that our proposal limits the scope based on</p> <p>20 information provided by Sioux Steel.</p> <p>21 Q If your proposal limited the scope, you never notified</p> <p>22 Sioux Steel that there was a limitation to the scope of</p> <p>23 your review because they failed to provide information;</p> <p>24 is that correct?</p> <p>25 A We notified them in our proposal that we have excluded</p>	<p style="text-align: right;">Page 31</p> <p>1 weightbearing seams.</p> <p>2 A Correct.</p> <p>3 Q Seams in a hopper are an important structural design</p> <p>4 component.</p> <p>5 A Correct.</p> <p>6 Q KC contracted with Sioux Steel to do a structural</p> <p>7 engineering analysis and design review of the hoppers.</p> <p>8 A Correct.</p> <p>9 Q KC concluded that the design for all the members and</p> <p>10 plates fell within acceptable material limits for each</p> <p>11 member except for the columns on the 30 foot hopper.</p> <p>12 A Yes. And there's some clarification necessary with</p> <p>13 that answer, that what we analyzed was the plates and</p> <p>14 the members because that's what our RISA model checks</p> <p>15 for us kind of automatically. So as I've stated</p> <p>16 before, our scope did not include independent hand</p> <p>17 calculations of all the connections which are not part</p> <p>18 of the RISA model.</p> <p>19 Q If I look at <a href="#">Exhibit 9</a> and 19, that's your report?</p> <p>20 A Yes.</p> <p>21 Q We may have to go to the full context of that report,</p> <p>22 but there was specific hand calculations in the report</p> <p>23 that dealt with the column seams -- or the column</p> <p>24 supports, correct?</p> <p>25 A That's correct.</p>
<p style="text-align: right;">Page 30</p> <p>1 anything not specifically stated in this proposal. We</p> <p>2 did not state anywhere in our proposal that we would do</p> <p>3 independent hand calculations of every connection.</p> <p>4 Q KC never in writing notified Sioux Steel that its</p> <p>5 services under the proposal were limited because of</p> <p>6 Sioux Steel's failure to provide information. Is that</p> <p>7 a correct statement?</p> <p>8 A I think that our proposal was notification to</p> <p>9 Sioux Steel that our scope was limited.</p> <p>10 Q After the proposal was accepted, KC never in writing</p> <p>11 notified Sioux Steel that its services under the</p> <p>12 proposal were limited because of Sioux Steel's failure</p> <p>13 to provide information.</p> <p>14 A I think that's correct.</p> <p>15 Q And it's generally understood in the engineering</p> <p>16 community a structural engineering analysis and design</p> <p>17 review of hopper drawings should include an engineering</p> <p>18 analysis of weightbearing seams.</p> <p>19 A Yes.</p> <p>20 Q A structural analysis of a hopper design drawing would,</p> <p>21 by its engineering description, include an analysis of</p> <p>22 weightbearing seams.</p> <p>23 A Could you read that back?</p> <p>24 Q A structural analysis of a hopper design drawing would,</p> <p>25 by its engineering description, include analysis of</p>	<p style="text-align: right;">Page 32</p> <p>1 Q And it was your best engineering opinion at the time</p> <p>2 you issued your report on August 28, 2012, that the</p> <p>3 column seams were not sufficient as designed, correct?</p> <p>4 A Not seams, but yes, the --</p> <p>5 Q Excuse me. The columns.</p> <p>6 A The columns. That's correct.</p> <p>7 Q Okay. And the only exception noted as not sufficient</p> <p>8 as designed were the columns on the 30 foot hopper; is</p> <p>9 that correct?</p> <p>10 A That is correct.</p> <p>11 Q And we talked about this: Not sufficient design is a</p> <p>12 stamp that the entire structure is defective; is that</p> <p>13 correct?</p> <p>14 A Yeah. If one part of a structure fails, then the</p> <p>15 whole --</p> <p>16 Q It's either pass or fail, right?</p> <p>17 A Yeah. Correct.</p> <p>18 Q And it's either it's all okay or if one part is</p> <p>19 deficient, then the whole is deficient, correct?</p> <p>20 A That's correct.</p> <p>21 Q Now, the exception that the columns were not sufficient</p> <p>22 as designed was later withdrawn or modified, correct?</p> <p>23 A That's correct.</p> <p>24 Q KC was never hired to perform peer review evaluation of</p> <p>25 SS's employees, correct?</p>

<p style="text-align: right;">Page 45</p> <p>1 I know of.</p> <p>2 Q Well, did you perform that interview?</p> <p>3 A No. That initial meeting was Eric.</p> <p>4 Q So Eric's the only one that had an initial client</p> <p>5 interview before the proposal you drafted, <a href="#">Exhibit 7</a></p> <p>6 and 17, were sent to the client?</p> <p>7 A I believe I talked to Chad on the phone as well during</p> <p>8 the proposal phase.</p> <p>9 Q And, again, if you did talk with Chad, that's not</p> <p>10 memorialized any place in the documents of KC; is that</p> <p>11 correct?</p> <p>12 A Other than what shows up on my proposal and what's on</p> <p>13 this job information sheet, I mean, that's where I</p> <p>14 would have taken what I learned and memorialized it, as</p> <p>15 you say.</p> <p>16 Q It's the obligation of a licensed professional engineer</p> <p>17 to set out clearly the scope of professional services</p> <p>18 to be provided; is that correct?</p> <p>19 A That's correct.</p> <p>20 Q It's the obligation of a licensed professional engineer</p> <p>21 to set out any limitations to the scope of services to</p> <p>22 be provided; is that correct?</p> <p>23 A And we did that.</p> <p>24 Q And to the extent that you did that is that that's your</p> <p>25 interpretation of the original proposal, <a href="#">Exhibit 7</a> and</p>	<p style="text-align: right;">Page 47</p> <p>1 period with Chad?</p> <p>2 A Yeah, I think I did.</p> <p>3 Q Do you have any -- there's no reference to that?</p> <p>4 A I don't have anything in writing.</p> <p>5 Q If there's a question on the scope of work, it's the</p> <p>6 obligation of the licensed professional engineer to</p> <p>7 confirm in writing the client's understanding of a</p> <p>8 limitation of services; is that fair?</p> <p>9 A I did not believe that there was a question as to the</p> <p>10 scope of work.</p> <p>11 Q I understand that. But if there is.</p> <p>12 A If I believed that there was a question, then it would</p> <p>13 have been my obligation to clarify for Chad, yes.</p> <p>14 Q In performing professional services, engineering</p> <p>15 services, it's the obligation of the engineer to</p> <p>16 disclose to the client any circumstances that might</p> <p>17 modify the scope of services; is that correct?</p> <p>18 A I don't think it's possible to anticipate everything,</p> <p>19 so I don't -- I don't think it's practical to make a</p> <p>20 long list of "if this, then this" type things in a</p> <p>21 proposal.</p> <p>22 I think that it's clear from our proposal that</p> <p>23 they were to provide us with their calculations for</p> <p>24 review, and they did not do that.</p> <p>25 Q And you never indicated to them that that was a problem</p>
<p style="text-align: right;">Page 46</p> <p>1 17; is that correct?</p> <p>2 A Yeah, we said we excluded anything not specifically</p> <p>3 stated in the proposal.</p> <p>4 Q Is there any documentation in your file that your</p> <p>5 interpretation of the proposal, <a href="#">Exhibit 7</a> and 17, are</p> <p>6 consistent with the client's understanding of the</p> <p>7 limitations you claim exist in 7 and 17?</p> <p>8 A You're asking did I get -- well, Sioux Steel accepted</p> <p>9 our proposal.</p> <p>10 Q I'm asking two questions: One, is it documented? And</p> <p>11 did it happen?</p> <p>12 A Okay. Sioux Steel accepted our proposal, so that</p> <p>13 implies that they read it and accepted it.</p> <p>14 You want to know if I got some confirmation from</p> <p>15 him as to what he understood our proposal meant?</p> <p>16 Q That's correct, before you issued your report on</p> <p>17 August 28, 2012.</p> <p>18 A Yeah, that's what I think we talked about and I think</p> <p>19 Eric talked about with him was kind of the goal of this</p> <p>20 review.</p> <p>21 The goal of this review, as I said, was to do an</p> <p>22 independent determination of the loads and the RISA</p> <p>23 model so that he could compare those to his loads and</p> <p>24 RISA model because it was something new for him.</p> <p>25 Q But did you have any discussion during this 30-day</p>	<p style="text-align: right;">Page 48</p> <p>1 for you to issue your opinion letter/engineering</p> <p>2 document on August 28, 2012, that the designs were</p> <p>3 sufficient except for the columns on the 30 foot</p> <p>4 hopper?</p> <p>5 A Yeah, what I decided to do in the absence of Chad's</p> <p>6 calculations to review was to have Derek spot-check</p> <p>7 some of the connections. This was above and beyond our</p> <p>8 scope. Spot-checking connections was not part of our</p> <p>9 scope. This is something that we did in the absence of</p> <p>10 calculations from Chad to review.</p> <p>11 So I asked him to spot check some connections that</p> <p>12 I felt were unique as far as Sioux Steel's experience.</p> <p>13 The results of those spot checks gave me a high degree</p> <p>14 of confidence in Chad's ability because the results</p> <p>15 showed that those connections were neither</p> <p>16 significantly overdesigned or significantly</p> <p>17 underdesigned. So I felt that we had fulfilled our</p> <p>18 responsibility based on my understanding because we had</p> <p>19 provided Chad with what he asked for specifically.</p> <p>20 MR. GOODSELL: I'm going to move to strike the</p> <p>21 answer as being nonresponsive.</p> <p>22 MR. TOBIN: I object.</p> <p>23 BY MR. GOODSELL:</p> <p>24 Q In performing professional engineering services, it's</p> <p>25 the obligation of the engineer to disclose to the</p>

<p style="text-align: right;">Page 49</p> <p>1 client any circumstances that would modify the scope of</p> <p>2 services. Is that a correct statement?</p> <p>3 A I don't think it's a fair statement, no.</p> <p>4 Q Okay. Spot-checking of seams is not set out in the</p> <p>5 proposal to perform a structural engineering analysis</p> <p>6 and design review; is that true?</p> <p>7 A True.</p> <p>8 Q The limitation of the structural analysis and design</p> <p>9 review by KC to, quote, spot-checking, quote, of</p> <p>10 bearing seams was never addressed with the client?</p> <p>11 A Well, I disagree. I did -- I do believe that I</p> <p>12 addressed with Chad that he was supposed to provide us</p> <p>13 with calculations to review. I did it in writing in</p> <p>14 the proposal, and I believe we talked about it verbally</p> <p>15 on the phone. As I said, I have no written</p> <p>16 documentation of the phone conversation.</p> <p>17 Q The limitation of the structural analysis and design</p> <p>18 review to spot-checking by KC of bearing seams was</p> <p>19 never addressed in writing with the client?</p> <p>20 A That's correct.</p> <p>21 Q And spot checking is not used in <a href="#">Exhibit 7</a> or 17,</p> <p>22 correct?</p> <p>23 A That's correct.</p> <p>24 Q Spot checking is not used in <a href="#">Exhibit 9</a> and <a href="#">Exhibit 19</a>;</p> <p>25 is that correct?</p>	<p style="text-align: right;">Page 51</p> <p>1 <b>did not check.</b></p> <p>2 Q Did you ask Sioux Steel to review your work after you</p> <p>3 submitted it to them?</p> <p>4 A Well, I assumed that was the entire point of the</p> <p>5 exercise was that he was going to review my work in</p> <p>6 order to use it to check his design.</p> <p>7 Q So I understand it is that they're coming to you with a</p> <p>8 design, asking you for professional opinions on the</p> <p>9 structural analysis of the design drawings, and you're</p> <p>10 assuming after you've given your opinion that they're</p> <p>11 going to come back and review their drawings to make</p> <p>12 sure your work's correct?</p> <p>13 A I assumed that they would review my report thoroughly</p> <p>14 because my understanding was that he wanted to use my</p> <p>15 report to confirm his own design, and if he doesn't</p> <p>16 look at my report, I don't know how he can use it.</p> <p>17 The other possibility -- and I didn't think that</p> <p>18 this is what he was doing, but the other possibility is</p> <p>19 that he just wanted somebody else to be responsible in</p> <p>20 case something bad happened. And I don't think that's</p> <p>21 what he was doing.</p> <p>22 Q No, I think they wanted you to check the hopper seams</p> <p>23 and do it because they didn't -- they wanted somebody,</p> <p>24 a third-party, to take a look at it.</p> <p>25 A He did not ask us to check the hopper seams.</p>
<p style="text-align: right;">Page 50</p> <p>1 A Which one is 19?</p> <p>2 Q It's going to be your report.</p> <p>3 A Well, actually, the report did include the spot checks.</p> <p>4 Q Let me --</p> <p>5 A The body of the report included what we checked.</p> <p>6 Q Let me rephrase the question. The summary of your</p> <p>7 findings --</p> <p>8 A The summary did not mention the word spot check, that's</p> <p>9 correct.</p> <p>10 Q The addendum of October 2, 2012, which is <a href="#">Exhibit 21</a></p> <p>11 [sic], that didn't include any reference to spot</p> <p>12 checking, did it?</p> <p>13 A That's correct.</p> <p>14 Q Would it be correct then after the addendum of</p> <p>15 October 2, 2012, that the designs were approved as</p> <p>16 being sufficient on both the 18 and 30 foot hoppers?</p> <p>17 A With regard to the things that we checked, yes. Chad</p> <p>18 was --</p> <p>19 Q Now we're back to the scope and --</p> <p>20 A Yes.</p> <p>21 Q -- whether or not you can limit the scope --</p> <p>22 A It's key.</p> <p>23 Q -- or whether you did limit the scope, correct?</p> <p>24 A Right. And we provided Chad with our full report, and</p> <p>25 he could have looked to see what we checked and what we</p>	<p style="text-align: right;">Page 52</p> <p>1 Q And it's your interpretation that the structural</p> <p>2 analysis of the design drawings, which includes the</p> <p>3 hopper seams, would exclude an analysis of the</p> <p>4 hopper seams?</p> <p>5 A We've been over this a few times. I think I've</p> <p>6 explained it.</p> <p>7 Q Is that your interpretation?</p> <p>8 A I think I've explained myself.</p> <p>9 Q Is that your interpretation?</p> <p>10 A Is it my interpretation that what -- you're going to</p> <p>11 try put ridiculous words in my mouth.</p> <p>12 Q I'm not.</p> <p>13 MR. GOODSSELL: Would you read the question back,</p> <p>14 please.</p> <p>15 (Discussion off the record.)</p> <p>16 MR. GOODSSELL: I'll readdress it.</p> <p>17 BY MR. GOODSSELL:</p> <p>18 Q It's your position that after Sioux Steel came to you</p> <p>19 and asked you to perform a structural engineering</p> <p>20 analysis of the design drawings, that after you</p> <p>21 performed that analysis, Sioux Steel or its engineer</p> <p>22 was to check your work; is that your position?</p> <p>23 A No. He was going -- my position is that he would look</p> <p>24 at my work, review my work and use that to check his</p> <p>25 work. Not to check my work. To use my report to check</p>



<p style="text-align: right;">Page 57</p> <p>1 responses made to interrogatories by Sioux Steel to KC.</p> <p>2 Does that sound correct?</p> <p>3 Take a look at it with counsel. I want to make</p> <p>4 sure that we understand the document.</p> <p>5 A It says, "Defendant's Supplemental Answers and</p> <p>6 Responses to Plaintiff's First Set of Interrogatories</p> <p>7 and Requests for Information."</p> <p>8 Q And if you go to the end of it, I think it's signed by</p> <p>9 the client, and is that your signature?</p> <p>10 A Yes, it is.</p> <p>11 Q Okay. And I want to discuss with you your answers, and</p> <p>12 I'm going to do it phrase by phrase starting on page 5.</p> <p>13 A Okay.</p> <p>14 Q "Defendant answers that Plaintiff and its in-house</p> <p>15 engineers and designers were responsible for the</p> <p>16 design."</p> <p>17 Is that your testimony?</p> <p>18 A Wait. Where?</p> <p>19 MR. TOBIN: I don't think we're on the same page.</p> <p>20 MR. GOODSSELL: Okay. It should be right about</p> <p>21 here. Are you there?</p> <p>22 MR. TOBIN: It starts right there.</p> <p>23 THE WITNESS: Defendant answers? Oh, yes.</p> <p>24 BY MR. GOODSSELL:</p> <p>25 Q So let me read that. Is that "Defendant answers that</p>	<p style="text-align: right;">Page 59</p> <p>1 something, the public is supposed to be assured that</p> <p>2 it's designed properly.</p> <p>3 BY MR. GOODSSELL:</p> <p>4 Q But you can't rely upon his work or his stamp or his</p> <p>5 design in giving any opinions as to the sufficiency of</p> <p>6 the hopper design, correct?</p> <p>7 A You're trying to make it an all-or-nothing thing, like</p> <p>8 either Chad's entirely responsible or I'm entirely</p> <p>9 responsible, and it's -- Chad has testified that he was</p> <p>10 the designer responsible for the design and that he</p> <p>11 hired us to do a review. Our review, as I've stated,</p> <p>12 was limited in its scope. It was not to design these</p> <p>13 things from scratch. Chad spent months on this. We</p> <p>14 spent 40 hours plus --</p> <p>15 Q Let me just stop you there. At the time that you</p> <p>16 entered into a proposal, there's no documentation that</p> <p>17 you discussed with Chad the limitation of your services</p> <p>18 in terms of the scope of structural engineering</p> <p>19 analysis on hopper seams; is that correct?</p> <p>20 A I believed at the time that the scope was understood.</p> <p>21 Q The next statement is, "Plaintiff hired Defendant to do</p> <p>22 a peer review of Plaintiff's design."</p> <p>23 Is that your testimony?</p> <p>24 A Yes.</p> <p>25 Q Continuing on, "that the review was limited in scope</p>
<p style="text-align: right;">Page 58</p> <p>1 Plaintiff and its in-house engineers and designers were</p> <p>2 responsible for the design of the hopper."</p> <p>3 Is that your statement?</p> <p>4 A Yes.</p> <p>5 Q And by responsible, does that mean responsible to get</p> <p>6 the design drawings to KC?</p> <p>7 A No. That means responsible for the design of the</p> <p>8 hopper.</p> <p>9 Q And it was the design of the hopper that they performed</p> <p>10 that they were asking you to review, correct?</p> <p>11 A Yes.</p> <p>12 Q So Sioux Steel is coming to you with hopper designs</p> <p>13 prepared in-house, and they're asking you to review</p> <p>14 those designs.</p> <p>15 A Yes.</p> <p>16 Q Correct?</p> <p>17 A Yes.</p> <p>18 Q And you can't rely upon any responsibilities that</p> <p>19 Sioux Steel in-house may have between its in-house</p> <p>20 engineer and the corporation -- you can't rely upon</p> <p>21 that professionally, correct?</p> <p>22 MR. TOBIN: I'm going to object to form of the</p> <p>23 question.</p> <p>24 THE WITNESS: I disagree with that statement.</p> <p>25 Chad is an engineer in his own right. When he designs</p>	<p style="text-align: right;">Page 60</p> <p>1 and did not include a detailed calculation of every</p> <p>2 connection." Is that your testimony?</p> <p>3 A That's my testimony.</p> <p>4 Q Pardon?</p> <p>5 A Yes.</p> <p>6 Q And it's your testimony that under the controlling</p> <p>7 scope of your review, there was no duty to review the</p> <p>8 assembly of the hopper seams in the panel?</p> <p>9 A Well, it was in my scope to review Chad's calculations,</p> <p>10 yes, it was.</p> <p>11 Q But you want to make a distinction between calculations</p> <p>12 and drawings, and you were obligated to review the</p> <p>13 drawings.</p> <p>14 A Calculations are necessary in order to know whether</p> <p>15 what's shown on the drawing is adequate or not. You</p> <p>16 can't review the drawings and know whether they're</p> <p>17 adequate without doing calculations.</p> <p>18 Q That's your calculations, though.</p> <p>19 A Somebody has to do calculations, and in this case the</p> <p>20 scope was for Chad to do the calculations and for me to</p> <p>21 review them.</p> <p>22 Q Had you personally reviewed <a href="#">Exhibit 24</a> and had</p> <p>23 performed a structural analysis of that seam, you would</p> <p>24 have concluded that the seam was insufficient as</p> <p>25 designed, correct?</p>

<p style="text-align: right;">Page 61</p> <p>1 A I believe so, yes.</p> <p>2 Q I want to go to the second paragraph of your answer,</p> <p>3 starting with "to confirm that they were reasonable."</p> <p>4 Are you with me there?</p> <p>5 A Hold on a second.</p> <p>6 Q Okay.</p> <p>7 (Pause in the proceedings.)</p> <p>8 A Okay. Yes.</p> <p>9 Q And you're saying that, "in order to confirm that they</p> <p>10 were reasonable and that Plaintiff appeared to be</p> <p>11 knowledgeable and competent."</p> <p>12 A Yeah, I thought that in the absence of calculations</p> <p>13 from Chad, it would be prudent for us to do some spot</p> <p>14 checks of connections. This is something beyond our</p> <p>15 scope.</p> <p>16 Q And based on those spot checks, it's your conclusion</p> <p>17 that he was knowledgeable and competent.</p> <p>18 A Yes. As I said, the results of those spot checks gave</p> <p>19 us confidence that Chad was doing things right because</p> <p>20 the designs came back as neither way overdesigned or</p> <p>21 way underdesigned but looked like somebody intelligent</p> <p>22 had designed them.</p> <p>23 Q There were three spot checks that you performed,</p> <p>24 correct? One was on the support columns?</p> <p>25 A Yeah, I believe that's right.</p>	<p style="text-align: right;">Page 63</p> <p>1 Q -- at that time, where you now are testifying in your</p> <p>2 answers to interrogatories that he was knowledgeable</p> <p>3 and competent --</p> <p>4 A Yeah.</p> <p>5 Q -- your own report and calculations in your report show</p> <p>6 that out of the three hand-checked calculations, one</p> <p>7 was wrong; is that correct?</p> <p>8 A Yeah, but that's not a failure rate at 33 percent, if</p> <p>9 that's what you're thinking. It takes very many</p> <p>10 calculations to get to a correct answer, and it takes</p> <p>11 only one error to get an incorrect answer.</p> <p>12 So Chad was correct about the loading, about the</p> <p>13 load distribution and how it transferred through the</p> <p>14 structure, and then he designed those connections</p> <p>15 having made correct calculations all the way through.</p> <p>16 To arrive at an incorrect answer for the column,</p> <p>17 it only takes one mistake. So it's not a 33 percent</p> <p>18 error rate, if that's your point.</p> <p>19 Q Is there any place in the engineering documents where</p> <p>20 Sioux Steel requested you to review the competency of</p> <p>21 Chad Kramer?</p> <p>22 A Well, no. I mean, the review of his design is checking</p> <p>23 to see if his design is correct, but it's not -- it's</p> <p>24 not necessarily going to tell me if he's competent,</p> <p>25 you know.</p>
<p style="text-align: right;">Page 62</p> <p>1 Q Two was on the assembly of the upper panel to the ring,</p> <p>2 correct?</p> <p>3 A Yes.</p> <p>4 Q And the third one that was performed was on the</p> <p>5 compression ring weldment?</p> <p>6 A That's correct.</p> <p>7 Q Those are the only three spot checks that were</p> <p>8 performed?</p> <p>9 A That's correct.</p> <p>10 Q And out of those three spot checks that you performed</p> <p>11 at the time you issued your report, you concluded that</p> <p>12 one out of three was incorrect?</p> <p>13 A No. Which one was incorrect?</p> <p>14 Q Okay. In your report of August 28, 2012 --</p> <p>15 A Oh, the column.</p> <p>16 Q -- you find that it was deficient as to columns?</p> <p>17 A Yeah, the column is not something -- the column check</p> <p>18 is not what I would call a spot check. The column</p> <p>19 check was something that RISA -- the RISA-3D software</p> <p>20 actually does the check. Why Derek did an independent</p> <p>21 hand calculation I'm not sure. He did a separate hand</p> <p>22 calculation at the back, along with the spot checks,</p> <p>23 but it's not a connection calc. It's a column.</p> <p>24 Q But at the time you issued your report --</p> <p>25 A Uh-huh.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q The review of the design is a design review, correct?</p> <p>2 A Yes.</p> <p>3 Q Now, had you discussed in your proposal at the time you</p> <p>4 entered into it peer review and the scope of peer</p> <p>5 review, that could have been addressed before you</p> <p>6 completed your work, not in this litigation; is that</p> <p>7 correct?</p> <p>8 A What could have been addressed?</p> <p>9 Q If you would have addressed the peer review statement,</p> <p>10 that's what you designed to do, if you'd have addressed</p> <p>11 that with them at the time of your proposal, any</p> <p>12 misunderstandings or expansion of the review could have</p> <p>13 been addressed at that point in time?</p> <p>14 MR. TOBIN: I'm going to object.</p> <p>15 THE WITNESS: I'm sorry. I don't understand.</p> <p>16 MR. TOBIN: I think he's already indicated that</p> <p>17 the use of the word peer review and design review is a</p> <p>18 distinction without a difference. You are subscribing</p> <p>19 something substantive to that. We are not. And we can</p> <p>20 address the whole issue by either orally amending the</p> <p>21 answer now to substitute design for peer, or we can do</p> <p>22 that in a written supplement following this deposition,</p> <p>23 but there's no difference from the defense perspective</p> <p>24 as to that issue. So if we can moot that, we'll</p> <p>25 happily do so.</p>